

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 4200 OF 2017

ANTAR BHARATI SHIKSHAN SANSTHA BILOLI THROUGH ITS
PRESIDENT
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

Mr.V.S.Panpatte, Advocate for the petitioner
Mr.C.S.Kulkarni, AGP for the respondent/State
Mrs.Y.M.Kshirsagar, Advocate for respondent Nos. 3 to 6

**CORAM : PRASANNA B. VARALE &
S.M.GAVHANE, JJ.**

DATED : 03.08.2018

P.C. :-

. Heard Mr. Panpatte, learned counsel at length.

2. The petitioner institute by way of the present writ petition seeking direction to respondent Nos. 3 to 6 to close down 6th and 7th std. Classes run in respondent No.6 school forthwith as per the letter dated 24.07.2015. Mr. Panpatte, learned counsel in his detailed arguments submitted that the petitioner institute is running a school at place Arjapur, Tq. Biloli, Dist. Nanded for the primary classes i.e. from 1st to 5th std and 5th to 8th std on grant-in-aid basis. Then it is submitted that in the very area respondent No.6 Zilla Parishad is running a school it was initially being run for 1st to 4th std.

Subsequently respondent No.6 started running classes for 5th to 7th std in the year 2013-2014. Learned counsel by inviting our attention to the representation made to the authorities which are placed on record. Learned counsel then invited our attention to the representation made to the Block Education Officer at the instance of the President of the petitioner institute submitted that a request was made to close down the classes being run by respondent No.6 Zilla Parishad. It is stated in the representation dated 20.06.2015 placed on record at Exh.A that the Zilla Parishad started running the classes of 6th to 7th std unauthorizedly. It was the submissions of the learned counsel appearing for the petitioner that the respondent No.6 failed to obtain any prior permission from the State Government to run the classes as such it was running the classes illegally. The representation further states that there are two schools in the village one is private aided school other is Zilla Parishad school. Then it is stated that both these schools are within a distance of 1 Km. in so far as the secondary classes are concerned and within distance of 3 km in so far as higher secondary classes are concerned then by referring to Right To Education Act of 2009 it is stated in the representation that by giving a total go by to the provision of the Act the Zilla Parishad is running the

classes of 6th and 7th std and these classes be closed down forthwith. Learned counsel in his submissions further argued that two schools operating very class for 5th to 7th std namely the school of the petitioner and school of Zilla Parishad is creating unhealthy competition between two schools and its resulting in financial loss to the petitioner institute. Learned counsel also placed heavy reliance on the communication issued by the Education Officer (Primary), Zilla Parishad, Nanded to the Block Education Officer and then a communication issued by the Deputy Director of Education, Latur Division, Latur to the Education Officer (Primary) dated 07.09.2016. Learned counsel submitted that in spite of repeated communications to the concerned Education Officer no heed is paid to these communications and till date the Zilla Parishad is running the classes for 5th to 8th std. Then learned counsel invited our attention to the order of this Court dated 10.04.2018. Learned counsel submitted that on the back drop of the submissions of learned counsel for petitioner this Court was pleased to direct the Chief Executive Officer, Zilla Parishad, Nanded to take a particular stand and submit a report to that effect within two weeks. The submissions of the learned counsel is the only stand which the Chief Executive Officer, Zilla Parishad, Nanded could have

taken on the back drop of the contentions raised in the petition as well in view of the documents placed on record is, to submit before this Court that the necessary direction would be issued to close down the classes from 5th to 8th std running in the Zilla Parishad school forthwith. Our attention was also invited to the report submitted and placed on record at Exh.F in compliance of the order of this Court dated 10.04.2018. Mr. Panpatte, learned counsel by relying on the Government Resolutions dated 02.07.2013 and 28.08.2015 reiterated his submission that these two schools are within distance of 1 km. as such, in no case the Zilla Parishad ought to have permitted to run the classes of 5th to 8th std. Learned counsel submitted that in view of the Government Resolutions the petition accordingly amended and certain grounds are added in the petition with an additional prayer A-1 and same reads:

A-1. By a writ of certiorari or any other appropriate writ or direction in the like nature, the report dated 11.06.2018 of the respondent No.3 (at Exh.'F') may please be quashed and set aside.

3. Learned AGP opposes the petition. Learned AGP also placed reliance on the provisions of the Right to Education Act. Learned counsel appearing for the Zilla

Parishad also opposes the petition by inviting our attention to the Government Resolutions which are placed on record and relied on by the petitioner as well by relying on certain provision of the Right to Education Act.

4. On hearing of learned counsels for the parties we are of the opinion that though the submissions of Mr. Panpatte, learned counsel looks attractive at first blush, on perusal of the provisions of the Act as well on the provisions of Government Resolution and also considering the factual aspects of the matter there is fallacy in the submissions as such we are unable to accept these submissions. The very first submission was nature of creating an unhealthy competition between two institutes. This submission can be tested firstly, if these two institutes are private institutes and if there is an unhealthy competition between two private institutes or if there is a competition between two institutes one institute having requisite permission and authorization from the State Government and the another institute lacking of such permission and authorization. Certainly this would be a material consideration in these two cases. In so far as the second case namely, if there is a competition between two institutes one having a

legal permission or authorization another lacking unauthorization or permission then the claim will have to be assessed on that consideration and the preference is required to be given in favour of the meritorious institute having a requisite permission and authorization from the State Government.

5. Considering these very aspects as our attention was invited to the provisions of the Right to Education Act, it would be necessary to refer to certain provisions. The very definition clause of the Act i.e. Section 2 refers to various terms, such as, appropriate Government, Child, Elementary Education and it would be relevant for our purposes to refer to Section 2-h which defines 'local authorities'. Section 2-h reads as under:-

2-h:- "Local authority" means a Municipal Corporation or Municipal Council or Zilla Parishad or Nagar Panchayat or Panchayat, by whatever name called, and includes such other authority or body having administrative control over the school or empowered by or under any law for the time being in force to function as local authority in any city, town or village.

6. To refer the definition of 'school' Section 2-n reads as under:-

2-n. "School" means any recognised school imparting elementary education and includes-

(i) a school established, owned or controlled by the appropriate Government or a local authority.

7. It would be also relevant to refer the term 'elementary education' Section 2-f and definition reads as under:

2-f. "elementary education" means the education from first class to eight class.

8. Mr. Panpatte, learned counsel placed heavy reliance on the Rule 6 of the Act in support of his submissions. The said provision reads as under:

Rule 6: Area or limits of neighbourhood.

(1) The area or limits of neighbourhood within which a school has to be established by the appropriate Government or the local authority shall be -

(a) in respect of children in Class from I to V, a school shall be established within a walking distance of one km of the neighbourhood;

(b) in respect of children in classes from VI to VIII, a school shall be established within a walking distance of three km of the neighbourhood.

9. It was the attempt of Mr. Panpatte, learned counsel to submit that there is reference of distance in these provisions and this reference of distance be considered on the back drop of the Government Resolution dated wherein it is stated that there must be a specific distance between two schools.

10. In our opinion, the submissions of the learned counsel are misconceived. The object as per Rule 6 is to see that the child must have an access to the nearest school in the area. As such the Rule 6 opens with the word area or limits of the neighbourhood within which school has to be established by the appropriate Government or Local Authority shall be: a) in respect of class 1st to 5th a school shall be established within walking distance of 1 km of the neighbourhood b) in respect of children in classes from 6th to 8th std a school shall be established within walking distance of 3 km of the neighbourhood. The use of the word walking distance is with a specific purpose and it is certainly to achieve the object that a student should not be deprived of any education facility for the reasons of non accessibility of the school within a distance of his reach. The reliance was also placed on the Government Resolution dated 02.07.2013 and 28.08.2015.

11. Mr. Panpatte, learned counsel appearing for the petitioner vehemently submitted that the Government Resolution dated 02.07.2013 refers to an exercise to be undertaken by the Chief Executive Officer, Zilla Parishad to take stock of the situation about the schools being

run under the Zilla Parishad Administration as well the schools being run under the Administration of the private institutes and by taking such stock of situation a comprehensive report be submitted to the Director of Education (Primary) in the required cases. Now, there cannot be any dispute on such a procedure being laid down in the Government Resolutions so as to have a ready material available with a superior authority like Director of Education (Primary) for considering the cases of grant of permission for the additional divisions. Merely because, such procedure laid down in the Government Resolutions by itself one cannot jump to the conclusion that this provision keeps the Zilla Parishad school imparting education for 5th to 8th std out of consideration and no Zilla Parishad should provide such an academic facility to the students of the village where there is already a private school operating such classes. Such a submission would be clearly contrary to the provisions of the Right to Education Act. If the Right to Education Act is floated with the provision to reach the laudable object of providing education facility to every child then keeping certain children out of these facility merely because these students are taking education in the classes being run by the Zilla Parishad that to local authority which is recognized and approved under the

Right to Education Act is nothing but frustrating the object of the Act itself.

12. Learned counsel appearing for the Zilla Parishad was justified in inviting our attention to another provision of the Right to Education Act. Our attention was invited to Section 18 (1) the provision reads thus:

Section 18) **“No school to be established without obtaining certificate of recognition-**

(1) No school, other than a school established, owned or controlled by the appropriate Government or the local authority, shall, after the commencement of this Act, be established or function, without obtaining a certificate of recognition from such authority, by making an application in such form and manner, as may be prescribed”

13. Bare reading of the provision would show that pre-requisit for obtaining permission or approval to run a school is for those schools which have been run by private institute because an exception is carved out in the provision itself to these schools being run, being established and controlled by the appropriate Government or local authority. It is not in dispute that the school in which 5th and 8th std classes are being run by the local authority Zilla Parishad. On the back drop of this provision of the Act and the factual aspect if the petitioner is making submissions that because of the

classes of 5th to 8th std run in the Zilla Parishad school, the petitioner is put to financial losses and as such, the classes being run by the Zilla Parishad be closed down is not only unacceptable submission but is illogical and irrational submission. If the students taking education in 5th to 8th std classes are having a choice available to take the education in Zilla Parishad school or a private school, the students may exercise their choice. Merely because the petitioner institute private institute is put to financial loss cannot be a ground to force upon the students to take the education only in class being run by petitioner's school. Such a direction would be unacceptable.

14. We are unable to accept the submissions of Mr. Panpatte, learned counsel appearing for the petitioner for one more reasons. The petitioner is seeking closure of 5th to 8th std classes being run by the Zilla Parishad in the said village Arjapur. If such closure is permitted, it would lead to monopoly of the petitioner institute for running 5th to 8th classes. The creation of monopoly by one institute certainly cannot be an object under the Right to Education Act.

15. Considering all these aspects, we are of the opinion that the petition is meritless and deserves to be dismissed and same is accordingly dismissed.

[S.M.GAVHANE, J.]

[PRASANNA B. VARALE, J.]